

So Ordered.

Dated: January 29th, 2019



*Friedrich P. Corbit*  
Frederick P. Corbit  
Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

7 In re: Case No. 18-01665-FPC13

8 LANCE ERIN HUFF, NOT FOR PUBLICATION

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11 Debtor.

12 LANCE ERIN HUFF, Plaintiff, Adversary No. 18-80036-FPC

13 vs. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 JILL MARIE WEYANT HUFF,

15 Defendant.

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17 THIS MATTER came before the court pursuant to the complaint filed by

18 Debtor Lance Erin Huff objecting to the claim of Jill Marie Weyant Huff (Claim

19 No. 3).<sup>1</sup> The trial took place on January 17, 2019. At trial, the court heard

20 testimony from Karen Goehri, Cori Caro, Jill Weyant, and Lance Huff. The court

21 has considered the testimony, the exhibits admitted at trial, the arguments of the

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<sup>1</sup> The Debtor filed an objection to Ms. Weyant's claim and a motion to avoid her lien in main bankruptcy case 18-01665-FPC13. As these Findings of Fact and Conclusions of Law also directly relate to those two filings, a copy will be docketed in 18-01665.

1 parties, and the applicable legal authority. The court finds and concludes as  
2 follows:

3 **FINDINGS OF FACT**

4 1. On June 12, 2018, the Debtor filed a voluntary petition under Chapter  
5 13 in this court (ECF No. 1 in 18-0665).

6 2. On his schedules, the Debtor valued his residence at \$299,000, listed a  
7 first position mortgage loan of \$187,520, and claimed a homestead exemption of  
8 \$111,480 under RCW 6.13.010, 6.13.020, and 6.13.030.

9 3. Ms. Weyant timely filed a proof of claim for \$29,600, of which she  
10 stated \$20,000 was secured by a deed of trust on the Debtor's residence (Claim No.  
11 3 in 18-0665).

12 4. The Debtor objected to Ms. Weyant's claim, arguing the deed of trust  
13 was forged as he never signed it and Ms. Weyant's claim was subject to offset  
14 (ECF No. 41 in 18-0665). This objection ultimately became the complaint in  
15 adversary proceeding 18-80036 (ECF No. 1).

16 5. The underlying facts giving rise to the proof of claim are as follows:

17 a. The Debtor and Ms. Weyant married in 2003. In 2004, the  
18 Debtor executed a quitclaim deed conveying the residence to  
19 himself and Ms. Weyant as husband and wife. The deed was  
20 recorded. On September 22, 2016, the Debtor and Ms. Weyant  
21 signed a decree of dissolution, which was entered in superior  
22 court on September 29, 2016.

23 b. The decree of dissolution provides that personal property had  
24 been divided between the parties and the Debtor was awarded  
25 the residence, which he was to refinance to pay Ms. Weyant  
26 \$20,000 for her interest in the residence.

1                   c. In the spring of 2017, after unsuccessfully attempting to  
2                   refinance, the Debtor entered into a purchase and sale  
3                   agreement for the residence.

4                   d. On June 7, 2017, the appointed date for closing, the Debtor  
5                   requested additional time to close so he could put certain  
6                   arrangements in place. Believing Ms. Weyant had failed to  
7                   disclose all her assets—specifically her retirement account—in  
8                   the divorce, the Debtor desired to place the \$20,000 in escrow  
9                   in order to facilitate closing while also protecting his ability to  
10                  reopen his divorce settlement. The closing did not happen that  
11                  day.

12                  e. At 3:34 p.m. on June 7, 2017, Ms. Weyant recorded a deed of  
13                  trust dated September 27, 2016. This deed of trust was  
14                  acknowledged by notary Cori Caro.

15                  f. The sale of the residence did not occur, and the buyers sued the  
16                  Debtor in superior court for breach of contract. In relevant part,  
17                  the Debtor made third party claims against Ms. Weyant and Ms.  
18                  Caro.

19         6. At the trial in this court, Ms. Weyant called Ms. Goehri and Ms. Caro  
20         to testify. Ms. Caro testified that the Debtor presented the deed of trust to her to  
21         notarize, showed her his driver's license as identification, and she notarized the  
22         deed of trust.

23         7. Ms. Goehri testified that she personally knows the Debtor, works in  
24         the same office as Ms. Caro, and saw the Debtor meet with Ms. Caro at the office  
25         the day the deed of trust was notarized.

26         8. The only evidence the Debtor offered to support his claim the deed of

1 trust was forged was his own testimony.

2       9.     The testimony of Ms. Goehri and Ms. Caro is credible, and the Debtor  
3 has not met his burden of proof to show the deed of trust is a forgery. As such,  
4 while the lien did arise from the decree of dissolution, the valid deed of trust also  
5 creates a consensual lien on the residence.

6       10.    Ms. Weyant had a recognizable interest in the residence prior to the  
7 entry of the decree of dissolution. Her lien was created to equalize a division of  
8 community property and is thus an oweltly lien in the nature of a vendor's lien.

9       11.    The decree of dissolution awarded the Debtor a fee simple interest in  
10 the residence. This interest did not exist prior to the decree.

11       12.    More than one year has passed since the entry of the decree of  
12 dissolution, and the Debtor has not moved to reopen the divorce.

13       13.    The Debtor also testified as to his knowledge of both the existence of  
14 Ms. Weyant's retirement account and the approximate amount in the retirement  
15 account at the time he signed the decree of dissolution.

### **CONCLUSIONS OF LAW**

17       1.     Any Finding of Fact or any portion thereof that is properly a  
18 Conclusion of Law shall be deemed a Conclusion of Law.

19       2.     The certificate of notary imports verity, which contains a strong  
20 presumption as to its truth, and is not to be overcome absent clear and convincing  
21 testimony. *Campbell v. Campbell*, 146 Wash. 478, 483 (1928).

22       3.     As the trier of fact, the bankruptcy court is entitled to evaluate a  
23 witness's credibility. *In re Beauchamp*, 236 B.R. 727, 731 (9th Cir. 1999).

24       4.     11 U.S.C. § 522(f) sets forth three conditions which are prerequisites  
25 for avoidance of liens: (1) the lien must fix on an interest of the debtor in property;  
26 (2) to the extent that the lien impairs an exemption to which the debtor would have

1 been entitled; and (3) the lien must be a judicial lien.

2       5.     The third prerequisite is not satisfied here. A “judicial lien” is a “lien  
3 obtained by judgment, levy, sequestration, or other legal or equitable process or  
4 proceeding.” 11 U.S.C. § 101(36). Judicial liens may coexist with other categories  
5 of liens in the same property. *In re Stone*, 119 B.R. 222, 227 (Bankr. E.D. Wash.  
6 1990). Here, the lien arose from the decree of dissolution, making it an equitable  
7 judicial lien as it required judicial action for its creation. *See id.* at 230. But the  
8 Debtor also signed a deed of trust, a consensual lien. Consensual liens cannot be  
9 avoided.

10      6.     Additionally, the Debtor’s argument fails because “[t]he homestead  
11 exemption is not available against an execution or forced sale in satisfaction of  
12 judgments obtained: (1) On debts secured by . . . vendor’s liens arising out of and  
13 against the particular property claimed as a homestead[.]” RCW 6.13.080(1). A  
14 lien awarded in a dissolution proceeding to equalize distribution of jointly held or  
15 community property is an owelty lien. A judgment for owelty is an equitable lien  
16 in the nature of a vendor’s lien. *Hartley v. Liberty Park Assocs.*, 54 Wn. App. 434,  
17 438 (1989). If a debtor opts for the state exemptions, he or she takes them subject  
18 to the exceptions. *Stone*, 119 B.R. at 232-35. Ms. Weyant’s lien is an exception to  
19 the Debtor’s homestead exemption.

20      7.     Finally, the critical issue in determining whether a debtor may avoid a  
21 lien under § 522(f)(1) is whether the debtor “ever possessed the interest to which  
22 the lien fixed, before it fixed.” *In re Catli*, 999 F.2d 1405, 1408 (9th Cir. 1993).  
23 Whether a debtor possessed an interest in the home before the fixing of a lien is a  
24 question of state law. *Id.* Under Washington law, each spouse owns an undivided  
25 one-half interest in community property. When a marriage is dissolved, a court in a  
26 divorce proceeding must dispose of the couples’ community and separate property.

1 In disposing of the property, the divorce court may award one spouse the property  
2 outright subject to a lien awarded to the other spouse. *Id.* (citing various  
3 Washington cases and statutes).

4       8.     In Washington, CR 60(b)(1) allows a superior court to relieve a party  
5 from a final judgment or order if the party shows mistake, inadvertence, surprise,  
6 excusable neglect, or irregularity in obtaining the judgment or order. Any motion  
7 under CR 60(b)(1) must be made not more than 1 year after the judgment or order  
8 was entered.

9       9.     Ms. Weyant's lien is not subject to avoidance under 11 U.S.C. §  
10 522(f)(1) nor is it subject to offset.

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12            //END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW///  
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